

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SEVENTH AVENUE, INC.,

Plaintiff,

Case No. 2:16-cv-00325-PP

v.

SHAF INTERNATIONAL, INC.,

Defendant.

**DECLARATION OF SHANE BRUNNER IN SUPPORT OF
SEVENTH AVENUE INC.'S PETITION FOR FEES AND
SUBMISSION TO THE COURT IN RESPONSE TO DKT. #43**

I, Shane Brunner, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm of the Madison, Wisconsin office of Merchant & Gould. Merchant & Gould is an intellectual property law firm that focuses on intellectual property law, including patents, trademarks, copyrights and trade secrets.

2. I am admitted to practice law in the following bars: United States Court of Appeals for the Federal Circuit, United States Court of Appeals for the Seventh Circuit, United States District Court for the Eastern District of Wisconsin, United States District Court for the Western District of Wisconsin, the United States District Court for the Northern District of Illinois, the United States District Court for the Northern District of Indiana, the Illinois State Bar, and the Wisconsin State Bar.

3. I graduated from the University of Wisconsin Law School, *cum laude* and Order of the Coif, in 1999. For nearly 20 years, I have concentrated my practice on commercial and intellectual property litigation.

4. As part of my practice, I represent clients in complex intellectual property cases involving patents, trademarks, trade dress, and trade secrets in a variety of industry sectors, and technical fields including pharmaceuticals, biotechnology, mechanical technology, electronics, computer technologies, and business methods.

5. I have litigated many intellectual property cases, including those involving trademarks and patents. Many of those cases have been venued in Wisconsin's federal district courts.

6. I have become familiar with this litigation by examining the Court's March 7 Order (dkt. #43), other docket entries (including certain filings), Michael Best & Friedrich LLP's ("Michael Best") invoices, and conversations with Attorney John Scheller.

7. I have been asked to opine on the reasonableness of the hourly rates charged by Michael Best in the above-captioned matter and the hourly rate for Seventh Avenue Inc.'s in-house counsel.

8. I believe I am appropriately knowledgeable about the rates and services charged in litigation and particularly intellectual property litigation in Wisconsin, including the Eastern District of Wisconsin, having practiced in this, and other, federal courts for many years.

I have compared the hourly rates charged by Michael Best and requested by Seventh Avenue for Attorney Engling's work with the rates charged by other attorneys with comparable skill, experience, and reputation in the Madison and Milwaukee markets. I can attest to the fact that Attorney Scheller, Attorney Salman, and Attorney Engling's rates are in line with those prevailing in Madison and Milwaukee for similar services by lawyers of reasonable comparable skill, experience, and reputation.

Michael Best's Hourly Rates are Reasonable

9. For time spent in 2017, Michael Best charged Seventh Avenue \$545 per hour for services performed by John C. Scheller. As discussed more thoroughly below, I believe that Attorney Scheller's experience, qualifications, and strong credentials support the rate Michael Best charged Seventh Avenue for the services he provided.

10. I understand that Attorney Scheller, the lead attorney for the above-captioned matter, graduated from John Marshall Law School, magna cum laude, in 1995. While in law school, Attorney Scheller was the Editor-in-Chief for the *John Marshall Law Review*. After law school, Attorney Scheller clerked at the Illinois Court of Appeals. After clerking, Attorney Scheller first practiced litigation with a large law firm in Chicago before joining Michael Best. Attorney Scheller now is an equity partner and the Litigation Practice Group Chair at Michael Best. For over 20 years, Attorney Scheller has focused his practice on complex commercial and intellectual property litigation. Attorney Scheller is admitted to practice law in the following bars: United States Supreme Court, United States Court of Appeals for the Federal Circuit, United States Court of Appeals for the Seventh Circuit, United States District Court for the Eastern District of Wisconsin, United States District Court for the Western District of Wisconsin, the United States District Court for the Northern District of Illinois, the Illinois State Bar, and the Wisconsin State Bar. Additionally, Attorney Scheller has been honored and recognized for his experience in litigation by *Super Lawyers* magazine, *Benchmark Litigation*, and *Best Lawyers in America*. I know Attorney Scheller to be an experienced litigator in complex intellectual property and other matters and has a good reputation in the legal community. Accordingly, based on Attorney Scheller's experience, qualifications, and strong credentials, I believe the rate Michael Best charged Seventh Avenue for his services is reasonable and in line with the market.

11. For time spent in 2017, Michael Best charged Seventh Avenue \$280 per hour for services performed by Tanya M. Salman. As discussed more thoroughly below, I believe that Attorney Salman's experience, qualifications, and credentials support the rate Michael Best charged Seventh Avenue for services she performed.

12. I understand that Attorney Salman graduated from the University of Wisconsin Law School in 2012. While in law school, Attorney Salman was an editor for the Wisconsin International Law Journal. She also was a student attorney in the Wisconsin Innocence Project and Prosecution Project. Attorney Salman subsequently joined Michael Best. Attorney Salman is admitted to practice law in the following bars: United States District Court for the Eastern District of Wisconsin, United States District Court for the Western District of Wisconsin, the United States District Court for the Northern District of Illinois, the Illinois State Bar, and the Wisconsin State Bar. Attorney Salman has been honored and recognized for her experience in litigation by *Super Lawyers* magazine. Attorney Salman's practice is in complex commercial and trademark litigation. She has litigated trademark matters in front of multiple federal courts as well as the Trademark Trial and Appeal Board. Accordingly, based on Attorney Salman's experience, qualifications, and strong credentials, I believe the rate Michael Best charged Seventh Avenue for her services is reasonable and in line with the market.

Attorney Engling's Hourly Rate is Reasonable


13. Seventh Avenue has requested the Court to accept an hourly rate of \$490 for time that Seventh Avenue's in-house counsel, Timothy Engling, spent on matters. As discussed more thoroughly below, I believe that Attorney Engling's experience, qualifications, and credentials support Mr. Engling's \$490 hourly rate.

14. I understand that Attorney Engling graduated from the Chicago-Kent College of Law in 1995. In 1999, Attorney Engling received an LLM in intellectual property from the John Marshall Law School. From 1994 until 2008, Attorney Engling was an attorney in the Chicago office of Barnes & Thornburg LLP. While there, Attorney Engling became an equity partner and focused his practice on patent, trademark, and copyright matters. From 2008 until 2014, Attorney Engling was a business and intellectual property attorney at Miller Canfield in Chicago. In 2014, Attorney Engling joined Michael Best's Chicago office as a transactional, corporate intellectual property partner. Now, Attorney Engling is the Associate General Counsel at Colony Brands, Inc. In this position, Attorney Engling handles Colony Brands, Inc.'s trademark, licensing, enforcement, and unfair competition matters. In this position, he also handles Seventh Avenue's trademark, licensing, enforcement, and unfair competition matters. Accordingly, based on Attorney Engling's experience, qualifications, and strong credentials, I believe a \$490 hourly rate is reasonable and in line with the market.

15. In sum, it is my opinion that the rates charged by Michael Best and requested by in-house counsel are reasonable and in-line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience and reputation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of March, 2018

A handwritten signature in black ink, appearing to read "Shane Brunner", written over a horizontal line.

Shane Brunner